

The Use Tax is a tax imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. The Use Tax Act provides that in order to prevent actual or likely multistate taxation, the Use Tax does not apply to the use of tangible personal property in this State of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other state. See 86 Ill. Adm. Code 150.310. (This is a GIL.)

April 23, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated February 3, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

A private, formal letter of opinion is hereby requested on the information listed below. COMPANY is a nationally recognized leader in sales tax software applications and this request is based upon information required in a new product development effort. Therefore, in order to avoid pre-mature release of our product development efforts to the general public, we require total confidentiality.

The product under development is a Consumer's Use Tax application which will help our customers in the areas of direct payment calculations, vendor payment verification, inventory withdrawals and asset movement. The areas that need to be addressed are as follows:

1. Local Sales Tax Application - Situs:

A company has multiple locations within the state. Plant A removes a finished product from inventory and sends it to Plant B for internal use, not resale.

a) What is the situs for local tax purposes? The location of Plant A, where the product is removed from inventory or Plant B, the location where the product will be used or consumed?

2. Taxable Basis:

a) Inventory Removal; What is the taxable basis for Consumer Use Tax purposes on inventory removals? Should the tax be calculated on the total manufactured cost, which includes materials, labor and overhead, the materials cost only, the wholesale cost or the retail value?

b) What is the taxable basis if the item is a product sample which is given away free of charge? In this instance, there is no retail selling price since the sample is not manufactured with the intent of being resold.

c) What is the taxable basis for fixed assets which are transferred into the state after having been used in another state? Should the taxable basis be the net book value, the original cost or the fair market value?

3. Direct Pay Permits

a) If a company has been granted a Direct Pay Permit, how should intrastate purchases be handled? Should these transactions be taxed under the Sales Tax Laws as they would be if the vendor were to collect the tax, or are they subject to the Use Tax Laws. This question becomes extremely pertinent in instances where localities have enacted a sales tax, but not a use tax.

b) Do Direct Pay Permits cover all purchases, in-state as well as out-of-state?

4. Reciprocity

a) How is tax paid in another state applied? Should state tax paid in another state be credited against the current state use tax due and the county tax paid in another state be credited against the county tax due etc. or should the total combined sales tax paid be applied against the current combined use tax due?

b) Is credit given for Use Tax paid in another state? i.e. If the item was originally purchased out-of-state, the Seller's Use Tax would have been paid. If the out-of-state vendor was not registered to collect in the original state, a Consumer's Use Tax would have been self-assessed. Therefore we ask, are all taxes previously paid on a transferred item of tangible personal property allowed as credit, or is there a limitation?

We appreciate your consideration on the above and thank you in advance for your assistance. The inclusion of this information in our database up front, will guarantee the accuracy of our product and avoid audit complications for both the state and our customers in the future. If possible, we ask for your response by the end of this

month. If this is not possible, we would appreciate notification as to when a response might be forthcoming. Your response can be forwarded to:

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Should you have any questions or require further clarification, please contact me at #### or by e-mail at ####.

The Use Tax is a tax imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. The Use Tax is paid to Illinois retailers registered to collect Use Tax. If the Use Tax is not paid to an Illinois registered retailer, the purchaser must self-assess the Use Tax at the rate of 6.25% and remit it to the Department. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property. Therefore, when retailers take an item from inventory and "use" the item, a Use Tax liability is incurred. This would be the case, for example, where a retailer takes an item from inventory and makes a gift of it to someone. In such a situation, the retailer is the user of the item and incurs a Use Tax liability on his cost price of the item.

In addition, the Use Tax Act provides that in order to prevent actual or likely multistate taxation, the Use Tax does not apply to the use of tangible personal property in this State of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other state. See 86 Ill. Adm. Code 150.310, enclosed. In addition, depreciation is allowed for out-of-State use. See the enclosed copy of 86 Ill. Adm. Code 150.110.

The Non-Home Rule Municipal Use Tax and the Home Rule Municipal Use Tax may also apply to certain transactions. See 65 ILCS 5/8-11-1.5 and 65 ILCS 5/8-11-6. Such taxes are generally imposed upon tangible personal property that is titled or registered with an agency of this State's government and collected by the municipality imposing the tax, except that the Home Rule Municipal Use Tax imposed by the city of Chicago is collected by the Illinois Department of Revenue. The city of Chicago also imposes and collects a Home Rule Municipal Use Tax upon non-titled and non-registered tangible personal property. You may wish to contact the city of Chicago for further information on that tax.

Illinois does not generally authorize the use of direct pay permits. Purchasers must pay tax to registered retailers or document an exemption. However, Public Act 90-682 created the Direct Pay Permit Implementation Act, which requires the Department to implement a pilot direct pay permit program.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

ST 99-0134-GIL

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.